

Attachment D

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SOAH Docket No. 473-99-0155
DOCKET NO. 20334

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PUBLIC UTILITY COMMISSION
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OF TEXAS

EMERGENCY PETITION OF THE §
 ADVISORY COMMISSION ON STATE §
 EMERGENCY COMMUNICATIONS §
 AND THE GREATER HARRIS COUNTY §
 9-1-1 EMERGENCY NETWORK FOR §
 DECLARATORY RULINGS ORDERING §
 SOUTHWESTERN BELL TELEPHONE §
 COMPANY TO UNBUNDLE ITS 9-1-1 §
 NETWORK AND 9-1-1 DATABASE §
 MANAGEMENT SYSTEM §

GENERAL COUNSEL'S BRIEF ON THRESHOLD LEGAL/POLICY ISSUES

COMES NOW the General Counsel of the Public Utility Commission of Texas (General Counsel) and files its Brief on Threshold Legal/Policy Issues in the above-referenced case and in support thereof respectfully shows as follows:

I. DISCUSSION

On February 8, 1999, the Office of Policy Development (OPD) issued an order requesting briefing on six threshold legal and policy issues. The answer to some of the questions posed by OPD is dependent on the type of access to SWBT's 911/E911 network SCC is requesting in this case. As discussed in more detail below, SCC, as information services provider, is entitled to access subscriber list information¹ which includes customer names, addresses and telephone numbers. SWBT's obligation to provide third parties direct access to and control of the routing functions of SWBT's 911/E911 network is much less clear. SCC is requesting access to SWBT's 911/E911 network to provide "real-time, ALI-based selective routing for 9-1-1 calls."² However, at

¹ The term "subscriber list information" is defined in §222(f)(3) of the FTA.

² SCC Motion to Intervene at 3.

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this time it is unclear whether SCC seeks to provide selective routing for 911 calls by connecting its Service Control Point (SCP) directly to SWBT's Service Transfer Point (STP) or end office switch or 911/E911 tandem on an unbundled basis. General Counsel needs more information from SCC on precisely how SCC is proposing to interact with SWBT's 911/E911 network. The answer to this question is pivotal in resolving the issues in this docket. General Counsel is seeking this information through discovery and has also requested a meeting with SCC representatives to discuss their proposal in more detail.

1. Is Southwestern Bell Telephone Company (SWBT) obligated under state or federal law to provide unbundled access to its 9-1-1 network and 9-1-1 Database Management System (DBMS) services?

Qualified yes. While the phrase "access to its 911 network" is not entirely clear, General Counsel interprets this question as applying only to SWBT's obligation to provide access to subscriber list information as defined in §222(f)(3) of the FTA. SWBT's obligation to provide direct, unbundled access to and control of the selective routing functions of SWBT's 911/E911 network is addressed in more detail below in response to question 2.

In its 911 Forbearance Order, the Federal Communications Commission (FCC) made a distinction between the database functions (i.e., information storage and retrieval) of E911 services and the routing functions of E911 services. This distinction is discussed in more detail below.

Section 272 of the FTA requires the Bell Operating Companies (BOCs) to conduct certain competitive activities, including interLATA information services, through separate affiliates. The BOCs historically provided E911 services on an integrated basis.

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The FCC's Forbearance Order addressed a request by the BOCs for the FCC to forbear from enforcing the 272 separate affiliate requirements as to E911 services. The BOCs contended and the FCC agreed that E911 service was an "information service" as defined under the Communications Act of 1934.³ The FCC granted the BOC's request for forbearance of the §272 separate affiliate requirement to the BOC's E911 services. However, the FCC conditioned its forbearance on the requirement that the BOC's make available to "unaffiliated entities all listing information, including unlisted and unpublished numbers as well as the numbers of the other LEC's customers, that it uses to provide E911 services."⁴ The FCC further required that each BOC provide access to this listing information "at the same rates, terms and conditions, if any, it charges or imposes on its own E911 services."⁵

To the extent that SCC is requesting access to SWBT's 911/E911 listing information, SWBT's is obligated to provide access to this information as required in the 911 Forbearance Order.

By contrast, the FCC did not require the BOCs to make their E911 routing information available to unaffiliated entities because "we do not believe such a condition is necessary to ensure that BOC provision of E911 service is just, reasonable, and non-discriminatory, in accordance with §10(a)."⁶

³ Because the BOC's E911 service offer the capability for storing and retrieving information, they are information services, except to the extent they are used for the management, control or operation of telecommunications systems or the management of telecommunications services. *In the Matter of Bell Operating Companies Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities*, CC Docket No. 96-149, Memorandum Opinion and Order at paragraph 17 (footnote omitted) (rel. Feb. 6, 1998) (Forbearance Order).

⁴ Forbearance Order at paragraphs 28, 34.

⁵ *Id.*

⁶ *Id.* at paragraph 36.

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In response to the argument that BOCs should be required to provide equal access to E911 routing information as part of their obligation to provide access to unbundled to local switching, the FCC responded that this request was beyond the scope of the Forbearance Order proceeding.⁷ SWBT's obligation to provide third parties direct, unbundled access to the routing function of its 911/E911 network is discussed below in response to question number 2.

2. Is SWBT obligated under state or federal law to allow other providers direct access to SWBT's 9-1-1 tandem to permit real time data interjection for the purpose of real-time routing of 9-1-1 calls?

SWBT's obligations to provide third parties direct access to and control of its 911 tandem for routing purposes is impacted by several factors.

Section 251 and 252 of the FTA require SWBT to provide telecommunications carriers unbundled access to its 911/E911 databases and network so that a requesting telecommunications carrier's customers can access 911 and E911 services.⁸ SWBT contends that because SCC is not a "telecommunications carrier" SWBT has no obligation under the FTA to connect its facilities with SCC's database.⁹ SWBT is correct that SCC is not a "telecommunications carrier" under the FTA. If SCC becomes a telecommunications carrier, however, SWBT would be required to provide SCC the same access to its 911/E911 network that it provides to other telecommunications carriers.

Under the Texas Utilities Code, if SCC seeks access to SWBT's routing and switching 911 network, it must first obtain the authority to do so. Section 52.001(1)(E) of the Texas

⁷ *Id.* at 37. "While we do not here decide the nature and extend of the obligations that the Local Competition Order places on incumbent LECS to provide E911 routing information, we find that that order, which implements the requirements of section 251, does not address whether the BOCs have an obligation to provide E911 routing information pursuant to section 272."

⁸ 47 U.S.C. §§251(c)(3) and 252(d)(1).

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Utilities Code defines "basic local telecommunications service" to include "access to 911 services provided by a local authority or dual party relay service." SCC's proposal to provide real-time, ALI-based selective routing of 911 calls is an element of "basic local telecommunications service" under §51.002(1)(E). Texas Utilities Code §54.001 requires entities providing basic local telecommunications service to do so by obtaining a certificate of convenience and necessity (CCN), service provider certificate of operating authority (SPCOA) or certificate of operating authority (COA). SCC could file for an SPCOA under §54.154 which is intended for "innovative, competitive and entrepreneurial business[es] to provide telecommunications services."

Recently the Commission granted an SPCOA to Dakota Services Limited for the limited purpose of providing data services within a specified geographic area.¹⁰ Similarly, SCC could request a certificate for the limited purpose of accessing and routing 911 calls on an unbundled basis.

Assuming that SCC obtained authority to provide access and routing of 911 calls, SCC would be entitled to interconnection with SWBT and access to SWBT's Unbundled Network Elements (UNEs) under §251(c)(2) & (3) of the FTA. FCC Rule 319 requires incumbent LECs to provide requesting carriers access to seven listed network elements, including switching capability.¹¹ In the Mega-Arbitration I, this Commission has determined that access to the signaling network should be through an STP rather than direct access through an SCP to control routing by end office switches or a tandem unless

⁹ SWBT Response to Petition at 3.

¹⁰ PUC Docket No. 19621, *Application of Dakota Services Limited for a Service Provider Certificate of Operating Authority*, (Order) (January 12, 1999).

¹¹ 47 C.F.R. §51.319.

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an industry standard for such connectivity has been established and approved by the Commission.¹² This requirement is also discussed in response to question 4 below.

In addition, until recently, access to 911 tandems and 911 databases was considered to be a UNE under FCC Rule 319. However, as a result of the U. S. Supreme Court's decision in the *AT&T Corp. v. Iowa Utilities Board*,¹³ FCC Rule 319 will be vacated.

In *Iowa Utilities Board*, the Supreme Court concluded that the FCC failed to consider the "necessary and impair" standards of FTA §251(d)(2) in giving blanket access to the network elements in FCC Rule 319 and held that the rule must be vacated.¹⁴

In response to the Supreme Court's ruling in *Iowa Utilities Board*, this Commission requested a briefing from the participants in PUC Project No. 16251 on the impact of the *Iowa Utilities Board* case on SWBT's application for entry into the Texas interLATA telecommunications market pursuant to §271 of the FTA. Among the questions directed to SWBT by the Commission Staff were whether SWBT intended to continue to provide UNEs pursuant to pending and approved interconnection agreements and if so, for what period of time.¹⁵ The Commission Staff also requested how SWBT intended to handle requests from carriers without interconnection agreements.¹⁶ SWBT's responses to Staff's questions are due to be filed with the Commission no later than February 16, 1999.

¹² *Petition of MFS Communications Company, Inc. for Arbitration of Pricing of Unbundled Loops*, Docket No. 16189, et al, Arbitration Award (Nov. 8, 1996).

¹³ ___ U.S. ___ (Jan. 25, 1999), slip op. From <http://supct.lawcornell.edu/supct/html/97-826.ZS.html> (*Iowa Utilities Bd.*).

¹⁴ *Id.* at 3.

¹⁵ PUC Docket No. 16251—*Investigation of Southwestern Bell Telephone Company's Entry Into the Texas InterLATA Telecommunications Market*, Memo to Participants from Donna Nelson and Kathy Farroba, February 8, 1999 at 1.

¹⁶ *Id.* at 2.

The Advisory Commission on State Emergency Communications (ACSEC) and the Greater Harris County 9-1-1 Emergency Network (GHCEN) (hereafter collectively referred to as Petitioners) and SCC correctly contend that this Commission has broad authority under §60.022 of the Texas Utilities Code to require a local exchange company to unbundle its services.¹⁷ Thus, if SWBT indicates in its February 16 filing in Docket No. 16251 that it will no longer provide UNEs, (including access to its 911 network), the Commission could conceivably require SWBT to provide unbundled access to specific SWBT services under this provision. Again, given the Supreme Court's ruling in the *Iowa Utilities Board* case, it is unclear how this Commission would respond to a request under §60.022(a).

3. Is SWBT obligated under and/or prohibited by state or federal law to disclose customer proprietary network information to a third party database provider to maintain the State's 9-1-1 database and route 9-1-1 calls?

Section 222 of the FTA defines customer proprietary network information (CPNI) and permits carriers to use, disclose or permit access to such information without prior customer approval in very limited circumstances. However, the definition of CPNI under §222(f)(1) specifically excludes subscriber list information. Section 222(f)(3) defines subscriber list information to include a customer's name, address and published phone number. If SCC seeks access only to subscriber list information, it does not fall under the definition of CPNI. Instead, as discussed above, such information should be considered "information services" to which SWBT must provide equal access to unaffiliated entities as required in the 911 Forbearance Order.¹⁸

¹⁷ Petitioners' List of Issues at 1-2; SCC Response to SWBT Request for Dismissal at 3.

¹⁸ Forbearance Order at paragraphs 17, 28 and 34.

SWBT's obligation to provide access to unpublished telephone numbers is not as clear. On the one hand the §222(f)(3)(B) of the FTA indicates that subscriber list information includes only telephone numbers that have been published.¹⁹ On the other hand, the 911 Forbearance Order requires the BOCs (including SWBT) to provide to all "unaffiliated entities" all subscriber listing information, including unlisted numbers, [and] unpublished numbers. . . .²⁰ If SCC seeks access to unpublished numbers, this issue will need to be resolved in this proceeding.

4. Is the Commission's ruling in the Mega-Arbitration I proceeding that "SWBT is not required to allow Signaling System 7 (SS7) advanced intelligent access from MCI's Service Control Point" dispositive in this matter?

To the extent that SCC seeks access and control SWBT's 911 tandem through SCC's Service Control Point (SCP), the Commission's ruling in the Mega-Arbitration may be dispositive in this case. In that proceeding, the Commission further held that "[w]hen industry standards are established concerning connectivity of ILEC switches with LSP SCP's, parties may petition the Commission to require SWBT to provide such connectivity." If industry standards concerning the type of connectivity requested by SCC have been established, SCC may petition the Commission to require SWBT to provide this connectivity. In the absence of such standards, the Commission's ruling in the Mega-Arbitration I is dispositive in this case on the issue of direct access and control of SWBT's 911 tandem or end office switch through SCC's SCP.

¹⁹ 47 U.S.C. 222(f)(3)(B). See also *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115 Order at paragraph 8 (rel. May 21, 1998).

²⁰ Forbearance Order at paragraphs 28 and 34.

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If, however, SCC seeks access to SWBT DBMS through a Signal Transfer Point (STP), the referenced ruling may not be dispositive in this case. Finally, this ruling has no relevance regarding SCC's rights to access to the subscriber listing information of SWBT's 911/E911 network, as discussed above in question number 1.

5. Are third parties that provide 9-1-1 database services required to obtain an appropriate certificate in order to interconnect under §251(c) of the federal Telecommunications Act of 1996?

It depends. If SCC is requesting direct access and control of SWBT's 911/E911 tandem or end office switch directly through SCC's SCP, it is providing an element of "basic telecommunications service" for which a certificate (CCN, COA or SPCOA) is required.

If SCC is only seeking access solely to the subscriber listing information of SWBT's 911/E911 network, then it is providing information services for which no certificate is required.²¹ See also response to question number 2 above.

6. Does the FCC's 9-1-1 Forbearance Order impact this case: if at all?

Yes. The relevance of the FCC's 911 Forbearance Order is discussed above in response to question number 1 above.

Respectfully Submitted,

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²¹ See Texas Utilities Code §51.002(10)(B)(i).

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CERTIFICATE OF SERVICE

I, Thomas S. Hunter, Assistant General Counsel, Legal Division, certify that a copy of this document was served on all parties of record in this proceeding on this 12th day of February 1999, by First Class, U.S. Mail, Pre-paid Postage and by facsimile.



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